IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 862 OF 2004

1. State of Goa,
   represented by Special
   Land Acquisition Officer(N),
   Irrigation Department
   Now Water Resources Deprtment,
   Mapusa, Goa.

2. Executive Engineer,
   Works Division VIII,
   I.D. now G.T.I.D.C.,
   T.I.P. Complex,
   Karaswada, Bardez, Goa. ... Applicants

versus

Smt. Kunda Jagannath Sukhtankar,
C/o. Shri Bhaskar L. Bhandari,
Vassant Bhavan, Cumbharjua,
Ilhas, Goa. ... Respondent

Mr. S. R. Rivonkar, Government Advocate for the applicants.

Mr. V. K. Bodke, Advocate for the respondent.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 4TH APRIL, 2005.

O R D E R(PER N.A.BRITTO, J.)

The State of Goa(Respondent, for short) by application dated 3-11-2004 seeks refund of Rs.12,61,752/- along with proportionate interest accrued thereon after the applicants are paid Rs.8,26,866/- along with proportionate accrued interest.

2. Some facts are required to be stated to dispose of the said application.

By Notification published on Gazette dated 12-12-1991, the Government acquired 38,775 sq. mts. of the land of the applicants from survey no.471 of Colvale village and the L.A.O. by Award dated 26-10-1993 awarded to the applicants compensation at the rate of Rs.8/- per sq. mt. The applicants filed a reference for enhancement before the District Court and the learned Additional District Judge was pleased to enhance the compensation at Rs.100/- per sq. mt. The State filed an appeal

before this Court being First Appeal No. 71 of 2002 and this Court by Judgment dated 14-7-2004 reduced the compensation payable to the applicants at the rate of Rs.14.40 per sq. mt. At the time of filing of appeal the State deposited a sum of Rs.20,88,613/- before this Court on or about 3-5-2002 which was invested by the Registry of this Court on 14-5-2002. Subsequently, the applicants were allowed to withdraw a sum of Rs.10,00,000/- on 21-4-2003. The applicants have refunded a sum of Rs.1,51,100/- on 21-12-2004 being the excess payment made to the applicants. As per the applicants, the applicants are still entitled for a sum of Rs.1,51,099.37 as the respondent is liable to pay interest at the rate of 15% per year inspite of the deposit made by the respondent before this Court, in terms of Section 28 of the Land Acquisition Act, 1894.

3. It is the contention of learned Advocate Mr. V. K. Bodke that the applicants are entitled to 15% interest on the amount due to the applicants from the date of the deposit made by the respondent before this Court till the date the amount was actually paid to the applicants since the applicants were compelled to provide security at the time of withdrawing the

said amount. Mr. Bodke has placed reliance on the case of **P.S.L. R. Chettiar and others** v. **O. R. M. P. R. M. R. Chettiar** (AIR 1968 SC 1047) wherein the Hon'ble Supreme Court rejected the contention that the decree-holder could not claim any amount by way of interest after the deposit of the money in Court by stating that the deposit in that case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of Order 21, Rule 1 C.P.C. There was no stoppage of interest after the deposit.

4. The answer to the contention of Mr. Bodke can now be found in the case of **Prem Nath Kapur** v. **National Fertilizers Corpn. of India Ltd. and others**((1996) 2 SCC 71). The Supreme Court, speaking through three learned Judges and with reference to Sections 28 and 54 of the Land Acquisition Act, 1894 has stated that the liability to pay interest arises as and when the compensation is further enhanced and is coterminous with the payment of the amount under Section 34 from the date

of taking possession till date of payment or deposit or under Section 28 or Section 54 from the date of taking possession till the date of deposit of such excess amount of compensation. The Supreme Court has again stated that the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Land Acquisition Officer under Section 11 subsists until it is deposited into Court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into Court.

5. There is no dispute that the applicants were entitled to receive compensation of Rs.8,26,866/- as per the order of this Court dated 14-7-2004 in First Appeal No. 71 of 2002 on 3-5-2002 when the respondent deposited the sum of Rs.20,88,618/-. All that the applicants would be entitled to is the interest on the said sum of Rs.8,26,866/- earned by the applicants on the said amount when it was invested by the Registry of this Court in the Bank and that interest as per the applicants works out to Rs.43,110/-. This is respondent's own concession.

6. It is, therefore, obvious that the applicants withdrew an excess of Rs.1,30,024/- on 10-4-2003 and since the applicants utilised the said amount for his own purpose we deem it appropriate that the applicants ought to be ordered to pay interest at the rate of 7% on the said amount which for a period of 620 days i.e. to say from 11-4-2003 to 20-12-2004 works out to Rs.15,460/-. The applicants have deposited a sum of Rs.1,51,100/- on 21-12-2004 which means that they have deposited in excess. We hereby direct that an amount of Rs.5,616/- be refunded to the applicants as per the statement Annexure A, which shall be read as integral part of this order. The balance to be paid to the respondent/State of Goa. We order accordingly.

A. P. LAVANDE, J.

N. A. BRITTO, J.

STATEMENT (ANNEXURE A)

Amount payable to the Applicants on 3-6-2002	...	Rs. 8,26,866-00
Proportionate interest accrued from 14-5-2002 to 10-4-2003	...	Rs. 43,110-00
TOTAL	**...**	Rs. 8,69,976-00
Withdrawn by Applicants on 10-4-2003	...	Rs. 10,000-00
Withdrawn in excess by Applicants	..	Rs. 1,30,024-00
Interest at 7% from 11-4-2003 to 20-12-2004 on Rs.130024.	...	Rs. 15,460-00
Applicants refunded on 21-12-2004	...	Rs. 1,51,100-00
To be paid to the Applicants	...	Rs. 5,616-00

RD.